

Appl. No. 09/822,573

PATENT

Amdt. dated January 18, 2006

Reply to Office Action of September 20, 2005 and the
Advisory Action mailed December 20, 2005

Amendments to the Drawings:

The attached sheet of drawings includes changes to Fig. 12, along with an annotated sheet indicating the changes in red ink.

Attachment: Replacement Sheet
Annotated Sheet Showing Changes

REMARKS

Claims 10-14, 31-34, 37 and 38 have been examined. Claims 32 and 33 have been amended. Claim 34 has been canceled. Fig. 12 has been amended to clarify certain dimensions. Also, the specification has been amended to include elements set forth in Fig. 12. Reconsideration of the application, as amended, is respectfully requested.

Information Disclosure Statement

Applicants note that certain items in the Information Disclosure Statement submitted on June 14, 2005 were not considered by the Examiner. More specifically, U.S. Patents 3,550,864, 3,719,328, 3,771,982, 3,958,249, 5,297,734, 5,518,179, 5,918,637 were crossed through by the Examiner. Applicants respectfully request that these U.S. patents be considered and made of record.

Also, non-patent literature documents Hikayama, H. et al., "Ultrasonic atomizer with pump function" Tech. Rpt. IEICE Japan US88-74:25 (1988), Maehara, N. Et al., "Atomizing rate control of a multi-pinhole-plate ultrasonic atomizer" J. Acoustical Soc. Japan, 1988, pp. 116-121, 44:2, and Maehara, N. et al. "Influences of liquid's physical properties on the characteristics of a multi-pinhole-plate ultrasonic atomizer" J. Acoustical Soc. Japan 1988, pp. 425-431, 44:6 were not considered because they failed to include a summary in the English language. Accompanying this amendment is an abstract in English of the article entitled "Ultrasonic atomizer with pump function." Abstracts in English of the other two Japanese references will be forth coming in a supplemental response.

The Drawings

The office action is requesting new corrected drawings to show changes made in the previous amendment. Accompanying this amendment are drawings showing such changes.

The drawings were further objected to under 37 CFR 1.83(a) for not showing the "... holding member having a cross sectional length that is greater than a cross sectional width

... the vibratable member has a cross sectional length that is greater than a cross sectional width ... the length of the vibratable member being parallel to the length of the holding member” as claimed in claims 10 and 31.

Accompanying this response is an amendment to Fig. 12 clarifying where these features may be found in Fig. 12. In so doing, no new matter is being added. Rather, reference figures are simply being added. Hence, this objection is overcome.

Counsel for the applicants notes the statement in the Advisory Action that the examiner believes the addition of the relative lengths and widths as stated above constitutes new matter. In support of this position, the Advisory Action makes reference to MPEP 2125 and then asserts that the scale of the drawings in the present application are of little value. Applicants respectfully disagree.

MPEP 2125 states that, for a reference that is intended to be used to reject the claims of an application, the drawings of the prior art reference cannot be assumed to be to scale. The issue that MPEP 2125 does not address is whether an applicant can rely on his or her own drawings as support for a claim, which is the issue with the present application. However, it is well settled law that the drawings of an application can be used to support a claim, and that relative dimensions from a drawing may also be used to support dimensions set forth in a claim. For example, *In re Adolph Wolfensperger*, 302 F.2d 950 (1962) addresses this exact issue and holds that the applicant may take relevant dimensions of his drawings even when there is no mention in the specification that the drawings are to scale. With the present application, it is clear to one of skill familiar with piezoelectric transducers that, when looking at the drawings, the cross sectional length L1 of base portion 79 is greater than the cross sectional width W1 of base portion 79, and that the cross sectional length L2 of piezoelectric transducer 82 is greater than the cross sectional width W2 of piezoelectric transducer 82. As such, no new matter has been added to the application.

Claim Rejections – 35 USC 112

Claims 10-14, 31-34, 37 and 38 have been rejected under 35 USC 112, first paragraph as failing to comply with the written description requirement. More specifically, the office action states that the disclosure fails to describe the "... holding member having a cross sectional length that is greater than a cross sectional width ... the vibratable member has a cross sectional length that is greater than a cross sectional width ... the length of the vibratable member being parallel to the length of the holding member" as claimed in claims 10 and 31.

This rejection is respectfully traversed. As filed, Fig. 12 clearly shows these features. However, in order to further clarify this subject matter, the specification and Fig. 12 have been amended to recite: "As also shown in Fig. 12, cup shaped member-78 has a base portion 79 and a walled portion 81. The cross sectional length L1 of base portion 79 is greater than the cross sectional width W1 of base portion 79. Also, the cross sectional length L2 of piezoelectric transducer 82 is greater than the cross sectional width W2 of piezoelectric transducer 82. As further shown, length L1 is parallel to length L2."

In so doing, no new matter is being added since only clarifying references are being added to the specification and the drawing as set forth above. Since these limitations are clearly found in the specification, it is respectfully requested that the section 112, first paragraph rejection be withdrawn.

CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

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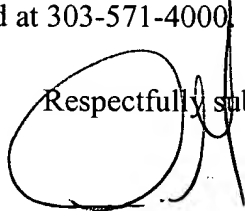
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PATENT

If the Examiner believes a telephone conference would expedite prosecution of
this application, please telephone the undersigned at 303-571-4000

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'Darin J. Gibby', is written over the text 'Respectfully submitted,'.

Darin J. Gibby
Reg. No. 38,464

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